SDR

304 NLRB No. 141

D-12289
Rochester, NY

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

E. G. SNYDER CO., INC.

and

Cases 3--CA--16214 and
3--CA--16365

ROAD SPRINKLER FITTERS LOCAL
UNION NO. 669 U.A., AFL--CIO

September 27, 1991

By Chairman Stephens and Members Devaney and Raudabaugh

DECISION AND ORDER

Upon a charge filed by the Union on March 29, 1991, and an amended charged filed by the Union on June 6, 1991, the General Counsel of the National Labor Relations Board issued a complaint on May 22, 1991, and an amended consolidated complaint on July 10, 1991, against E. G. Snyder Co., Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges, the complaint, and the amended consolidated complaint, the Respondent has failed to file an answer.

On August 7, 1991, the General Counsel filed a Motion for Summary Judgment. On August 14, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended consolidated complaint states that unless an answer is filed within 14 days of service, ''all of the allegations in the amended consolidated complaint shall be deemed to be admitted to be true and shall be so found by the Board.'' Further, the undisputed allegations in the Motion for Summary Judgment disclose that the General Counsel, by letter dated June 10, 1991, notified the Respondent that unless an answer to the complaint was received by June 17, 1991, a Motion for Summary Judgment would be filed.[1] By subsequent letters dated July 25, 1991, the General Counsel also notified the Respondent and its attorney that unless an answer to the amended consolidated complaint was filed by August 1, 1991, a Motion for Summary Judgment would be filed. The Respondent has not filed an answer to date nor requested an extension of time in which to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

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[1] By letter dated June 13, 1991, the Respondent notified the General Counsel that it had closed its business on February 15, 1991, that it was therefore unable to answer the complaint, and that the General Counsel should contact the Respondent's attorney. This letter does not constitute an answer to the complaint within Section 102.20 of the Board's Rules and Regulations as it does not specifically admit, deny, or explain each of the facts alleged in the complaint. Moreover, the Respondent's claim that it had closed its business does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. Cf. Cardinal Services, 295 NLRB No. 96 fn. 2 (June 30, 1989).

Findings of Fact

I. Jurisdiction

The Respondent, a New York State corporation, with an office and place of business in Rochester, New York, has been engaged as a mechanical contractor in the building and construction industry. During the 12 months preceding the issuance of the complaint and amended consolidated complaint, a representative period, the Respondent in the course and conduct of its business operations, provided services valued in excess of $50,000 for other enterprises within the State of New York, including Kodak corporation, a New York State corporation, which, in turn, during the 12 months preceding issuance of the complaints, annually sold and shipped, from its Rochester, New York facility, products, goods, and materials valued in excess of $50,000 directly to points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The Unit

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All journeymen sprinkler fitters, apprentices, and pre-apprentices in the employ of Respondent.

B. The Refusal to Bargain

Since about 1957, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since such date, the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is an

assent and interim agreement dated February 25, 1988, which, inter alia, mutually binds the Respondent and the Union to a collective-bargaining agreement between the Union and the National Fire Sprinkler Association, Inc. (the Association) which is effective by its terms for the period from April 1, 1988, to March 31, 1991. The Association is an employer association existing for the purpose, inter alia, of representing its employer members in collective bargaining with the Union over the terms and conditions of employment of employees of the employer members of the Association.

Since about March 8, 1991, the Union, by letter, has requested the Respondent to furnish the Union with information concerning, inter alia, the alleged dissolution of the Respondent's business and information concerning any work performed or subcontracted by the Respondent during the nine months preceding the date of the correspondence.[2]

By a subsequent letter dated April 22, 1991, the Union requested, inter alia, information related to the alleged parent corporation of the Respondent, Sonset Corporation, and details concerning the interrelationship, if any, between Sonset and the Respondent.

The requested information is necessary for, and relevant to, the Union's performance of its function as the agent for the exclusive collective-bargaining representative of the unit employees. Since March 8, 1991, and since April 22, 1991, the Respondent has failed and refused to provide the Union with the above-described information. We find that the Respondent's refusal to provide the requested information constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

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[2] In its April 22 letter, infra, the Union notes that the only response from the Respondent to this request was a brief, undated reply stating that ''the information you are requesting is impossible to obtain,'' which was received by the Union on April 2, 1991.

Conclusions of Law

By refusing on and after March 8, 1991, and April 22, 1991, to provide the Union with the information requested in its letters dated March 8, 1991, and April 22, 1991, respectively, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall also order the Respondent to supply the Union with information which is necessary for, and relevant to, the Union's performance of its function as the agent for the exclusive bargaining representative of the unit employees.

ORDER

The National Labor Relations Board orders that the Respondent, E. G. Snyder Co., Inc., Rochester, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with information necessary for, and relevant to, the Union's performance of its function as the agent for the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Provide to the Union the information it requested in its letters of March 8, 1991, and April 22, 1991.

(b) Post at its facility in Rochester, New York, copies of the attached notice marked ''Appendix.''[3] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. September 27, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[3] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to provide the Union with information necessary for, and relevant to, the Union's performance of its function as the agent for the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide the Union with the information it requested in letters dated March 8, 1991, and April 22, 1991.

E. G. SNYDER CO., INC.

_____
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 111 West Huron Street-Room 901, Buffalo, New York 14202-2387, Telephone 716--846--4951.